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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,671	05/21/2004	John S. Smyth	BUR920040064US1	3670
23550 7590 10/02/2007 HOFFMAN WARNICK & D'ALESSANDRO, LLC 75 STATE STREET 14TH FLOOR ALBANY, NY 12207			EXAMINER TASHAKKORI, MITRA	
			ART UNIT 2109	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/709,671

Applicant(s)

SMYTH ET AL.

Examiner

Mitra Tashakkori

Art Unit

2109

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 May 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 05/21/2004, 07/06/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 2109

This Office Action is in response to application filed on May 21, 2004 in which claims 1-31 are presented for examination.

### ***Status of Claims***

Claims 1-31 are pending, of which claims 1, 8, 16, 23, and 31 are in independent form.

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: S17 and S18. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

2. Claims 1-7, 9-10, 14-22 and 24-31 are objected to because of the following informalities:

Art Unit: 2109

- a. Claims 1, 9, 16, 24 and 31 recite that, for a resource with a status indicator showing the resource is available and where a query is in progress, the resource is only to be considered available "***only if an expanded time of the query is less than a specified response time***" but the term "expanded time" is loosely defined and minimally described in the specification. The scope of the claims that recite the term "expanded time" is not entirely clear.
- b. Claims 2-8 depend on claim 1 and are objected to on the same grounds.
- c. Claim 10 depends on claim 9 and is objected to on the same grounds.
- d. Claims 17-22 depend on claim 16 and are objected to on the same grounds.
- e. Claims 25-30 depend on claim 24 and are objected to on the same grounds.
- f. Claims 5, 14, 21 and 29 recite that the specified response time is within a "***threshold of the average query completion time***" but the term "threshold" is loosely defined and minimally described in the specification. More specifically, there is no suggestion in the specification of what numerical value should be considered acceptable, and yet the term is used in the claims. The scope of the claims that recite the term "threshold" is not entirely clear as a result.
- g. Claim 15 recites "***The system of claim 8, wherein the status component sets the status indicator***" where there is no status indicator recited in claim 8. Therefore, there is no antecedent basis for "the status indicator" in this claim. To further prosecution, the examiner is interpreting this claim as dependent on claim 9, which introduces a status indicator as an element of the system, for the purposes of prior art comparison and evaluation of novelty of invention.

Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 8-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 8-22 are directed to functional descriptive material that is not embodied in a tangible computer medium, i.e. software per se.

5. The scope of the term "computer useable medium" includes signals and carrier waves, which are not tangible mediums, and are therefore non-statutory. Functional descriptive material, when encoded on a computer-readable medium that falls in one of the statutory categories and employed as a computer component, becomes structurally and functionally interrelated to the medium, therefore also becoming statutory.

***Claim Rejections - 35 USC § 112***

6. Claims 1-7, 9-10, 16-22 and 24-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 2109

7. Claims 1, 9, 16, 24, and 31 each recite setting a status indicator "with the network resource availability." It is unclear what is meant by "with" in this situation, as in, what it means to set an indicator "with ... availability" exactly. Does this mean it is set to a value that represents the availability status? As written, this phrasing renders each of these claims vague and indefinite.

8. Claims 2-7 depend on claim 1 and are rejected on the same grounds.

9. Claim 10 depends on claim 9 and is rejected on the same grounds.

10. Claims 17-22 depend on claim 16 and are rejected on the same grounds.

11. Claims 25-30 depend on claim 24 and are rejected on the same grounds.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 2109

13. Claims 8, 11, and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Donker et al. US 2004/0107267 A1 (hereinafter referred to as Donker).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

14. As per claim 8, Donker discloses "**A system for indicating availability of a network resource in a client-server environment**" as a system to check and indicate whether or not a hyperlink is available (Donker, [0043]). The server that stores the content pointed to by the hyperlink could be considered a network resource, as could the content itself. Donker discloses "**a query component that determines network resource availability and response time**" as the portion of the system that checks the availability of links on a webpage by pinging the servers storing the web content of those hyperlinks (Donker, [0022]). A ping could be considered a query to determine availability and response time of a network resource such as a server. Donker discloses "**a status component that communicates the network resource availability as available only if the network resource is available within a specified response time**" as the portion of the system that indicates whether or not a resource is available (Donker, [0022]). A return ping may come back with an available, unavailable, or timeout status, where the timeout status occurs when a response is not received within a specified period of time (Donker, [0046]). Therefore, a resource is not considered available unless a positive response is received within a specific amount of time.

Art Unit: 2109

15. As per claim 11, Donker discloses "***The system of claim 8***" as discussed above in the analysis of claim 8. Donker further discloses "***wherein the query component repeats querying the network resource in the case that the network resource is unavailable***" as repeating the ping transaction for links that were determined to be either unavailable or where a timeout occurred (Donker, [0043] and [0045]).

16. As per claim 23, Donker discloses "***A method for indicating availability of a network resource in a client-server environment***" as the process of checking and indicating whether or not a hyperlink is available (Donker, [0043]). The server that stores the content pointed to by the hyperlink could be considered a network resource, as could the content itself. Donker discloses "***querying the network resource to determine network resource availability and response time***" as the step of pinging the web server storing the hyperlink content (Donker, [0043]). A ping could be considered a query to determine availability and response time of a network resource such as a server. Donker discloses "***and indicating the network resource is available only if the network resource is determined to be available within a specified response time***" as the indication of whether or not a resource is available based on a return ping, which may come back with an available, unavailable, or timeout status, and where the timeout status occurs when a response is not received within a specified period of time (Donker, [0046]). Therefore, a resource is not considered available unless a positive response is received within a specific amount of time.

Art Unit: 2109

***Claim Rejections - 35 USC § 103***

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claims 1-7, 9-10, 12-22, and 24-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donker in view of Peterson et al. US 2004/0010584 A1 (hereinafter referred to as Peterson).

19. As per claim 1, Donker discloses "***A method for indicating availability of a network resource in a client-server environment***" as the process of checking and indicating whether or not a hyperlink is available (Donker, [0043]). The server that stores the content pointed to by the hyperlink could be considered a network resource, as could the content itself. Donker discloses "***querying the network resource to determine network resource availability and response time***" as the step of pinging the web server storing the hyperlink content (Donker, [0043]). A ping could be considered a query to determine availability and response time of a network resource such as a server. Donker discloses "***setting a status indicator with the network resource availability***" as setting a visual indicator to show the status of a hyperlink that has been queried (Donker, [0046]). However, Donker does not disclose determining if a query is in progress when the indicator says the resource is available. Donker discloses refreshing the status of a link once a specified time period has passed, to ensure the status displayed is current (Donker, [0055]), but is silent on what happens while the refresh ping is in progress. Nevertheless, Peterson discloses a method and system for maintaining and

Art Unit: 2109

monitoring the state of a network (Peterson, [0008]) and mentions a different response in the case that a transaction is in progress, as compared to the case when a transaction is not in progress (Peterson, [0059]). It would be obvious to one skilled in the art to modify Donker to not only check the ping table to see if a link is considered available, but also to check to see if a ping transaction to update a previously-found link was in progress, as described in Peterson. Such a modification would ensure the most relevant, up-to-date information was being presented. Donker discloses the ping table is updated with an unavailable status as soon as a timeout has been reached for a ping transaction (Donker, [0046]). Therefore, Donker, in view of Peterson, discloses ***“in the case that the status indicator indicates that the network resource is available, determining whether a query of the network resource is occurring; and in the case that a query is occurring, indicating the network resource is available only if an expanded time of the query is less than a specified response time.”***

20. As per claim 2, Donker, in view of Peterson, discloses ***“The method of claim 1”*** as explained above in the analysis of claim 1. Donker further discloses ***“in the case that the status indicator indicates the network resource is available and a query is not occurring, indicating that the network resource is available”*** as indicating the resource is available when a return ping is received with an available status (Donker, [0046]).

21. As per claim 3, Donker, in view of Peterson, discloses ***“The method of claim 1”*** as explained above in the analysis of claim 1. Donker further discloses ***“wherein the querying step includes repeating querying the network resource in the case that the network resource is unavailable”*** as repeating the ping transaction for links that were determined to be either unavailable or where a timeout occurred (Donker, [0043] and [0045]).

Art Unit: 2109

22. As per claim 4, Donker in view of Peterson discloses "***The method of claim 1***" as explained above in the analysis of claim 1. Furthermore, the examiner is taking official notice that "***wherein the querying step includes setting a querying indicator that indicates whether querying is occurring, and the determining step includes checking the querying indicator***" is well known in the art. It is common practice to use an indicator to quickly and efficiently provide status information about something, especially when that status information is used as a basis for choosing what corresponding action is to be taken.

23. As per claim 5, Donker in view of Peterson discloses "***The method of claim 1***" as explained above in the analysis of claim 1. Donker discloses "***wherein the querying step includes updating an average query completion time using the response time only in the case that the network resource is available***" as the measurement of the time delay between when a ping is sent out and when the response (indicating the resource is available) is received (Donker, [0053]). The examiner takes official notice that it is common practice in the art to average together multiple measurements of this sort to ensure accuracy and consistency is achieved, especially in situations where the measurement acts as an evaluation criteria for something else, e.g. when setting the criteria for a timeout situation.

24. As per claim 6, Donker in view of Peterson discloses "***The method of claim 5***" as explained above in the analysis of claim 5. Donker discloses "***wherein the specified response time is equal to a value within a threshold of the average query completion time***" as adjusting the threshold time that is considered acceptable based on the measurements of delay between when a query is sent out and when a positive response is received (Donker, [0053]).

Art Unit: 2109

25. As per claim 7, Donker in view of Peterson discloses "***The method of claim 1***" as explained above in the analysis of claim 1. Donker discloses "***further comprising the step of setting the status indicator to unavailable in the case that a client accesses the network resource and the network resource is unavailable***" as setting the indicator to unavailable if a positive response is not received, as was discussed above in the analysis of claim 1, given that querying the network resource is substantially equivalent to accessing the network resource.

26. Claims 9-10, 11-22, and 24-31 recite limitations that are substantially similar to those of claims 1-7 (e.g. a system that corresponds with the method discussed above) and are rejected for the same reasons.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Tashakkori whose telephone number is 571-272-9069. The examiner can normally be reached on Mon-Thurs 8:30am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz Coby can be reached on 571-272-4017. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2109

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MT

  
FRANTZ COBY  
SUPERVISORY PATENT EXAMINER